

W.P.No.7897 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On	22.01.2025
Pronounced On	09.05.2025

Coram:**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.No.7897 of 2022
and W.M.P.Nos.7898 & 7900 of 2022

Mr.Sohanraj Praveen Kumar,
 S/o.Sohanraj Jain

... Petitioner

Versus

1.Additional / Joint / Deputy / Assistant
 Commissioner of Income Tax / Income Tax Officer,
 National Faceless Assessment Centre (NFAC),
 Delhi.

2.The Assistant Commissioner of Income Tax,
 Non-Corporate Circle 7(1),
 6th Floor, Wanaparthi Block,
 No.121, Mahatma Gandhi Road,
 Nungambakkam, Chennai – 600 034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, calling for the records of the 2nd respondent pertaining to reopening Notice for AY 2013-14 bearing DIN No.ITBA/AST/S/148/2020-21/1031806075(1) dated 26.03.2021 issued by the 2nd respondent herein, as well as the consequential order bearing DIN



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No.ITBA/AST/F/17/2021-22/1041724537(1) dated 27.03.2022 issued by the 1st respondent rejecting the petitioner's objections for reopening and quash the same.

For Petitioner : Mr.Srinath Sridevan,
Senior Counsel
for M/s.Anita Suresh

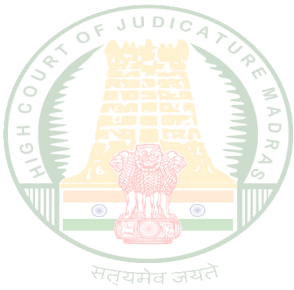
For Respondents : Mr.B.Ramana Kumar,
Senior Standing Counsel

ORDER

This Writ Petition has been filed by the Petitioner challenging the **Notice** dated **26.03.2021** issued by the 2nd Respondent, for the Assessment Year 2013-2014 and consequential **Speaking Order** dated **27.03.2022** passed by the 1st Respondent.

2. By the **Impugned Speaking Order** dated **27.03.2022**, the 1st Respondent has justified the re-opening of the Assessment that was completed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "IT Act") on **25.01.2016**. The reasons stated in the **Impugned Speaking Order** dated **27.03.2022** reads as under:-

"4.2.3.In the present case there was a definite information coming from the Investigation Wing and conclusions which have been arrived at by the JAO in the reasons recorded seeking reopening of the assessment



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were based on certain information and on verification of the return filed by the assessee which showed that assessee had not disclosed true nature of the loan transactions with certain parties. Therefore, the ratio laid down for valid reopening of the assessment has been fulfilled in the present case. In the present case, the reasons for the reopening were recorded by the AO though extracting the information received from the investigation Wing in preamble of the letter and by also noting that the assessee had not disclosed the true nature of its share transaction.

4.2.4. Reliance is placed on the following decisions:

“1. *Sonia Gandhi vs. Assistant Commissioner of Income-tax, Circle- 52(1) [2018] [Delhi] 97 taxmann.com 150;*

2. *EtiamEmedia Ltd. vs. Income-tax Officer- 2(2) [2019] 101 taxmann.com 231 (Madhya Pradesh) [19-12-2018];*

3. *Empee Holdings Ltd. vs. Deputy Commissioner of Income-tax, Company Circle II(I), Chennai [2019] 109 taxmann.com 10 (Madras) [07-06-2019];*

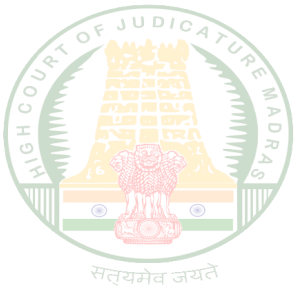
4. *Radhika Roy vs. Deputy Commissioner of Income-tax, Circle-18(1), New Delhi [2019] 106 taxmann.com 210 (Delhi - Trib.) [14-06-2019];*

5. *KisanAgro Mart (P.) Ltd. vs. Income Tax Officer [2019] 109 taxmann.com 496 (SC) [26-07-2019];*

6. *Chetan Sabharwal vs. Assistant Commissioner of Income-tax, Circle-28(1) [2019] 110 taxmann.com 57 (Delhi) [06-08-2019];*

7. *Meghavi Minerals (P.) Ltd. vs. Income Tax Officer, Ward-3(1) taxmann.com 174 (Gujarat) [27-08-2019];*

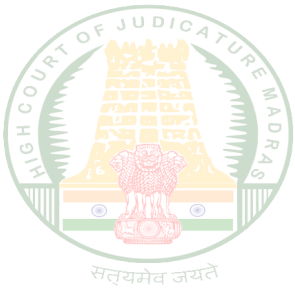
8. *Smt. A. Sridevi vs. Income-tax Officer, Non-Corporate Ward 16(1) [2018] 100 taxmann.com 434 (Madras) [03-12-2018]”*



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4.2.5 When full disclosure of material facts is not made during the original assessment the Supreme Court has held in CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561/187 Taxman 312 that the Assessing Officer has power to re-open the assessment if there is tangible material to conclude, prima facie that there has been escapement of income. However, the court cautioned that the power of reassessment is not one of review and that it does not admit of formation of a second opinion. The scope of the phrase 'reason to believe' was examined by the Supreme Court previously in Phool Chand Bajrang Lal v. ITO [1993] 203 ITR 456/69 Taxman 627. In Phool Chand Bajrang Lai (supra), the court made observations which remain undisturbed in Kelvinator of India Ltd. (supra) that where the transaction itself on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of original assessment proceedings, cannot be said to be disclosure of the 'true' and 'full' facts in the case and the ITO would have the jurisdiction to reopen the concluded assessment in such a case. It was further held that the assessing authority could have deferred the completion of the original assessment proceedings for further enquiry and investigation into the genuineness to the loan transaction but his failure to do so and complete the original assessment proceedings would not take away his jurisdiction to act under section 147, on receipt of the information subsequently. when the Revenue gets hold of information or material which tends to or has the potential of undermining its findings (previously made in the assessment proceedings) and have an important bearing, invocation of the power to reassessment is warranted."

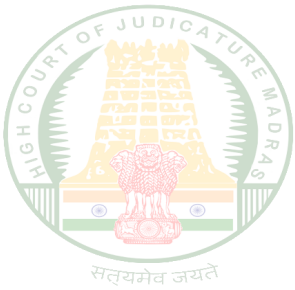


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3. The 2nd Respondent had issued a **Notice** dated **01.10.2021** under Section 143(2) read with Section 147 of the IT Act to the Petitioner, wherein, the 2nd Respondent had stated the reasons for reopening the assessment was completed on **25.01.2016**. The reasons stated by the 2nd Respondent in the aforesaid **Notice** dated **01.10.2021** for reopening the assessment are as under:-

“The assessee has filed his Return of Income for the A.Y. 2013-14 on 01.10.2013 declaring a total income of Rs.295,78,310/-. Information received from DDIT (Inv), Delhi states that the assessee has claimed the Long Term Capital Gain on sale of shares of M/s.Mono Herbicides Ltd. U/s.10(38). As per the records, the purchases of these shares have been undertaken by the following entities: Babita Naresh Jain, Rajesh Kumar Mehta, Rita Mehta etc. On analysis of the financials and markets related information with respect of shares viz., M/s.Mono Herbicides Ltd., it is noticed that these are illiquid shares and are not normally traded. The same is proven by the fact that the market cap of the shares during the financial year 2012-13 is either zero or meagre. The price at which they were sold was so phenomenal that it got spiked within a span of time which even a blue-chip company cannot normally achieve. From the aforementioned discussion, it is clear that these shares are not normally traded and that no one buys these shares unless one becomes party to these manipulative transactions with the active connivance of the operator. It was seen from the analysis of information that the assessee had a profit of Rs.1,09,98,909 on sale of shares. Therefore, the Long Term exempt capital gain on sale of shares of M/s.Mono Herbicides is bogus in nature and the



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corresponding receipt has to be brought to tax U/s.68 and taxed at normal rates.”

4. In response to the aforesaid **Notice**, the Petitioner had sent his Reply vide Communication dated **18.10.2021**, wherein, it has been categorically stated by the Petitioner that he had purchased and sold the shares of two companies viz., M/s.VMS Industries Limited and M/s.Diamant Infrastructure Limited and he had made Short Term Capital Gains which was the subject matter of **Scrutiny Assessment Order** dated **25.01.2016**.

5. The learned Senior Counsel appearing for the Petitioner specifically drew the attention of this Court to the Return of Income filed by the Petitioner on **01.10.2013**, wherein, there is a disclosure of Short Term Capital Gains by the Petitioner for a sum of **Rs.1,64,94,910/-**. Thus, the Assessing Officer vide **Scrutiny Notice** dated **15.10.2015**, called upon the Petitioner to furnish the details of shares purchased and sold for the aforesaid Short Term Capital Gains.

6. In response to the said **Scrutiny Notice** dated **15.01.2015**, the



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Petitioner sent his Reply vide Communication dated **26.10.2015** along with the details sought by the Assessing Officer. Thereafter, the Assessment Order was passed on **25.01.2016** under Section 143(3) of the IT Act.

7. After the **Assessment Order** was passed on **25.01.2016** in response to Return of Income filed by the Petitioner on **10.01.2013**, the 2nd Respondent has issued the **Impugned Notice** dated **26.03.2021** under Section 148 of the IT Act.

8. The learned Senior Counsel for the Petitioner also submitted that invoking the extension period of limitation under Section 147 of the IT Act was unjustified. That apart, in the consequential **Speaking Order** dated **27.03.2022**, the 1st Respondent has taken a different stand by stating that when the Petitioner was buying the shares of M/s.VMS and M/s.Diamant entities like M/s.Mono Herbicides Limited Babita Naresh Jain, Rajesh Kumar Mehta and Rita Mehta were the counter parties and thus, M/s.Mono Herbicides Limited has used for providing accommodation entry of Capital Gains to the Assessee through the mechanism of reversal trade and therefore, the reopening is correct and the contention of the Petitioner is



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9. The learned Senior Counsel for the Petitioner also submitted that there was no case made out for any non-disclosure of material information for completed assessment under Section 143(3) of the IT Act and therefore, the impugned proceedings started with the issuance of **Notice** dated **26.03.2021** under Section 148 of the IT Act was beyond limitation.

10. Further, the learned Senior Counsel for the Petitioner submitted that the issue involved herein is no longer *res integra* and is squarely covered by the decisions of this Court as well as Bombay High Court in the following cases:-

- i. ***Tractors and Farm Equipment Limited Vs. Assistant Commissioner of Income-Tax*** reported in **2018 SCC Online Mad 13767.**
- ii. ***M/s.Anand Cine Services Pvt. Ltd. Vs. Assistant Commissioner of Income Tax & Others in W.P.No.7690 of 2022 dated 20.02.2024.***
- iii. ***Commissioner of Income Tax Vs. Jet Airways (I.) Ltd.*** reported in **(2010) SCC Online Bom 2065.**

11. On the other hand, the learned Senior Standing Counsel appearing for the Respondents submitted that the information that was

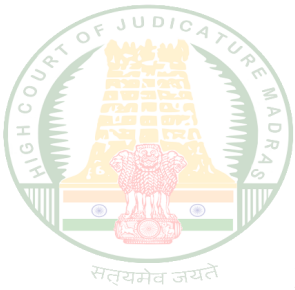


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available as on **26.03.2021** induced the Department to issue **Notice** under Section 148 of the IT Act. As on date of the Counter Affidavit i.e., **21.11.2024**, the Department is having several informations relating to the transactions, in which, the Petitioner has participated.

12. The learned Senior Standing Counsel appearing for the Respondents drew the attention of this Court to Paragraph No.8 of the Counter Affidavit, wherein, it has been stated that the Petitioner did not disclose any Long Term Capital Gains related to M/s.Mono Herbicides Limited and upon investigation, the Petitioner had not actually traded in these shares, despite which, the re-assessment proceedings revealed that the Petitioner had used a reversal trading mechanism to generate gains in the shares of M/s.VMS Industries Limited & M/s.Diamant Infrastructure Limited, facilitated by entities such as M/s.Mono Herbicides Limited, Babita Naresh Jain, Rajesh Kumar Mehta and Rita Mehta. It has also been stated that these entities were found to have provided accommodation entries for capital gains, including the use of manipulation in the share prices.



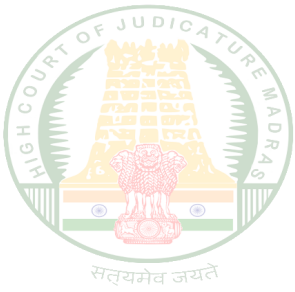
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13. The learned Senior Standing Counsel appearing for the Respondents further submitted that re-assessment proceedings is not yet completed. If the Petitioner is participated in the re-assessment proceedings, re-assessment order will be passed on merits. Therefore, the learned Senior Standing Counsel prayed for dismissal of this Writ Petition.

14. In the Counter Affidavit that has been filed by the Respondents, the Respondents have justified the invocation of extended period of limitation.

15. In the Counter Affidavit, it has been stated that the Petitioner had initially asserted that the shares of M/s.Diamant Infrastructure Limited were purchased in 2009-2010. However, records reveal these shares were acquired in the Financial Year 2012-2013 and sold shortly thereafter, contradicting the Petitioner's claim. Similarly, the purchase and rapid sale of M/s.VMS Industries Limited shares yielded a return of 175% within two months, while shares of M/s.Diamant Infrastructure Limited appreciated by 148% over the same period, further raising suspicious about the nature of the transactions.

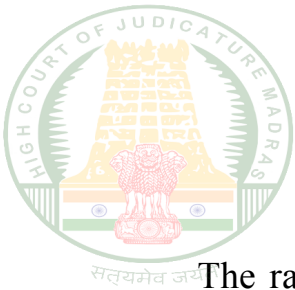


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16. However, during re-assessment proceedings, the faceless Assessing Officer identified irregularities suggesting that the Petitioner was engaged in “reversal trading mechanism” which involved entities like M/s.Mono Herbicides Ltd., Babita Naresh Jain, Rajesh Kumar Mehta, and Rita Mehta. The “reversal trading mechanism” involved the coordinated purchase and sale of shares in penny stocks to manipulate prices and provide accommodation entries for artificial capital gains.

17. It is further submitted that re-assessment was initiated based on information suggesting unusual gains claimed under Section 10(38) of the IT Act. The Assessment reported Short Term Capital Gains under Section 111A of the IT Act, specifically involving the purchase and sale of shares in M/s.VMS Industries Limited. Detailed scrutiny revealed that the Assessee purchased **4,00,000 shares** on **30.11.2012** for **Rs.81,28,568/-** and another **3,00,000 shares** on **03.12.2012** for **Rs.62,91,823/-**. Thereafter, on **23.01.2013** and **29.01.2013**, the Assessee sold **4,50,000** and **2,50,000 shares**, respectively for a combined total of **Rs.2,53,77,000/-**, reflecting an extraordinary appreciation of approximately 175% within just two months.



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The rapid and substantial increase in share value raised suspicions about the genuineness of the transactions, prompting re-assessment proceedings to examine the legitimacy of the gains and their tax treatment.

18. It is further submitted that the **Show Cause Notice** dated **27.03.2022** was also issued to the Petitioner to justify the re-opening of the assessment based on credible information from the insight portal. It is submitted that the Petitioner is involved in “reversal trading mechanism” to avail gains from shares of M/s.VMS Industries Limited and M/s.Diamant Infrastructure Limited. This mechanism typically involves a group of entities, engaging in coordinated transactions with the intent of artificially manipulating the prices of penny stocks. Through these several trades, the Assessee purchased shares of the aforementioned Companies, with entities like M/s.Mono Herbicides Limited, Babita Naresh Jain, Rajesh Kumar Mehta, and Rita Mehta acting as counter parties. It is evident that M/s.Mono Herbicides Limited played a significant role in providing accommodation entries of capital gains to the Assessee, thereby facilitating the execution of these trades and enabling the Assessee to claim unrealized gains. This manipulation of share prices through reversal



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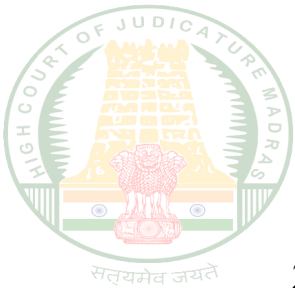
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trades undermines the legitimate purpose of the stock market and raises questions about the authenticity of the capital gains claimed by the Assessee. Therefore, it is crucial to investigate the nature of these transactions and their compliance with applicable tax laws.

19. I have considered the arguments advanced by the learned Senior Counsel for the Petitioner and the learned Senior Standing Counsel for the Respondents.

20. The **Impugned Notice** dated **26.03.2021** issued under Section 148 of the IT Act was culminated in the **Impugned Speaking Order** dated **27.03.2021**.

21. There is no dispute that the **Impugned Section 148 Notice** dated **26.03.2021** was issued just few days before the entire mechanism prescribed for re-assessment was overhauled by the Parliament by amending Section 148 with insertion of Section 148A, by amending Section 149, Section 151 and Section 151A of the IT Act.



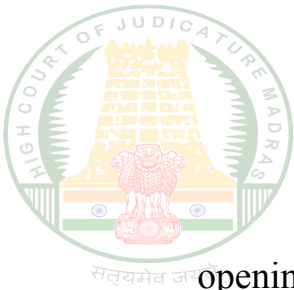
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22. If the **Impugned Section 148 Notice** dated **26.03.2021** was received after **01.04.2021** i.e., the date on which the new provisions came into force, the proceedings should have been proceeded under the New Regime as in force with effect from **01.04.2021** in terms of the decisions of the Hon'ble Supreme Court in “**Union of India and Others Vs. Ashish Agarwal**”, [2023] 1 SCC 617.

23. The law on the subject has been also further clarified by the Hon'ble Supreme Court in “**Union of India and others Vs. Rajeev Bansal**”, [2024] 167 taxmann.com 70 SC. However, there is no dispute on this aspect as the **Impugned Section 148 Notice** itself was received by the Petitioner prior to **01.04.2021**.

24. Therefore, the issue to be considered is whether the Respondents were justified in re-opening the assessment that was completed under Section 143(3) on **25.01.2016** for the Assessment Year **2013-2014** issuing the **Impugned Section 148 Notice** dated **26.03.2021**. The law as it prevailed then prescribed limitation under Section 149 of the IT Act. As per Section 149 of the IT Act, the limitation for issuing Notice for re-



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opening of the assessment under Section 148 of the IT Act reads as under:-

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“149. (1) No notice under Section 148 shall be issued for the relevant assessment year, -

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Explanation – *In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of Section 147 shall apply as they apply for the purposes of that section.”*

25. Situation that is contemplated in Clause (c) to Sub-Section 1 to Section 149 of the IT Act is not relevant for this case. If at all, the **Impugned Section 148 Notice dated 26.03.2021** should have been issued within the period of limitation prescribed under Clause (a) and Clause (b) to Sub-Section 1 to Section 149 of the IT Act. The period of limitation for issuance of Notice within four or six years as the case may be is to be reckoned from the end of the **Assessment year 2013-2014 i.e., 31.03.2014.**



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The period of four years would have expired on **31.03.2017**. Six years would have expired on **31.03.2019**.

26. Since the Notice for re-opening of the assessment was itself issued only on **26.03.2021**, which is long after expiry of the period of limitation prescribed in Section 149(1)(a) and (b) of the IT Act as it stood till **31.03.2021** prior to its substitution by **Finance Act, 2021** with effect from **01.04.2021**, the impugned proceedings have to be held to be without jurisdiction.

27. Therefore, this Writ Petition deserves to be allowed. It is accordingly allowed. No costs. Connected Writ Miscellaneous Petitions are closed.

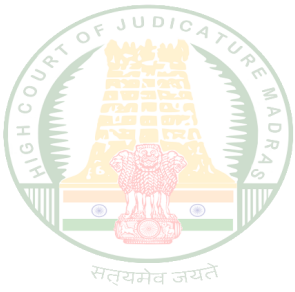
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Neutral Citation : Yes / No

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To:

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1. Additional / Joint / Deputy / Assistant

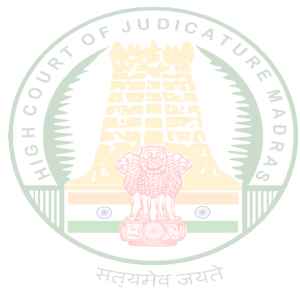
Commissioner of Income Tax / Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2. The Assistant Commissioner of Income Tax,
Non-Corporate Circle 7(1),
6th Floor, Wanaparthi Block,
No.121, Mahatma Gandhi Road,
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C.SARAVANAN, J.

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**Pre-Delivery Order in
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